

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHANE R. SCHANDEL,)	CASE NO. 5:08 CV 1985
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	MEMORANDUM OF OPINION
)	AND ORDER
)	
WILLIAM J. MARTIN, et al,)	
)	
DEFENDANTS.)	

Plaintiff *pro se* Shane R. Schandel, an inmate at the Belmont Correctional Institution, filed this civil rights action against the Judge William J. Martin, Prosecutor Donald R. Burns, Jr., Sheriff Dale R. Williams, and Deputy Sheriff Troy Watson. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915(e).

The "Statement of Claim" portion of the complaint states in its entirety as follows:

The Sheriff Mr. Dale Williams violated my due process rights by illegally obtaining evidence without a warrant. The deputy Troy Watson violated my 5th Amendment rights by not giving me the maranda (sic) act. Donald R. Burns violated my civil and constitutional rights by prosecuting me maliciously. The Judge Mr. William J. Martin violated the civil rights act of 1871 by going above and beyond his means to sentence me when everything was obtained illegally and maliciously.

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the district court is required to dismiss an action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which

relief can be granted, or if it lacks an arguable basis in law or fact.¹ *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996).

The allegations set forth in the complaint clearly challenge the validity of plaintiff's conviction and resulting confinement in an Ohio penal institution. The Supreme Court has held that, when a prisoner challenges "the very fact or duration of his physical imprisonment, . . . his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 501 (1973). Further, absent allegations that criminal proceedings terminated in plaintiff's favor or that a conviction stemming from the asserted violation of his rights was reversed, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus, he may not recover damages for his claim. *Heck v. Humphrey*, 512 U.S. 477 (1994).

Accordingly, this action is dismissed under section 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Dated: October 28, 2008



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

¹ A claim may be dismissed *sua sponte*, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking section 1915(e) and is dismissing the claim for one of the reasons set forth in the statute. *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997); *Spruytte v. Walters*, 753 F.2d 498, 500 (6th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986); *Harris v. Johnson*, 784 F.2d 222, 224 (6th Cir. 1986); *Brooks v. Seiter*, 779 F.2d 1177, 1179 (6th Cir. 1985).